

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Application to Assign Licenses from)
Maritime Communications/Land Mobile, LLC,) WT Docket No. 13-85
Debtor-in-Possession, to CFCC File No.)
Choctaw Holdings, LLC (0005552500))
)

REPLY COMMENTS OF THE UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its reply comments in response to the Commission’s Public Notice¹ in the above-referenced proceeding. UTC urges the Commission to grant the assignment application so that utilities and other critical infrastructure industry (CII) entities that desperately need access to spectrum can acquire the licenses from Choctaw. Utilities lack access to alternative spectrum options and Commission grant of the application would promote the public interest in overarching national energy policy objectives, including smart grid.² In that regard, UTC supports the comments on the record by the *CII Companies*³ and Shenandoah Valley Electric

¹ *The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny’s Joint M-LMS Field Testing Reports*, Public Notice, DA 12-1873, WT Docket No. 11-49 (rel. Nov. 20, 2012) (“*Second Thursday Public Notice*”).

² In the Enforcement Bureau proceeding in EB Docket No. 11-71, UTC and the National Rural Electric Cooperative Association (NRECA) filed a letter in support of removing the CII companies from the administrative hearing and allowing their acquisition of the instant licenses to go forward. See Letter to Marlene H. Dortch, Secretary of the Federal Communications Commission from Tracey Steiner, Deputy Chief Member Council, NRECA and Brett Kilbourne, Deputy General Counsel, UTC, EB Docket No. 11-71 (filed Aug. 19, 2011). UTC reiterates its support for such relief in response to the Commission’s Public Notice regarding the application filed by Maritime Communications/Land Mobile, LLC (MC/LM) and Choctaw Holdings, LLC.

³ See Comments of Critical Infrastructure Companies in WT Docket No. 13-75 (filed May 9, 2013)(the *CCI Companies* include Atlas Pipeline Mid-Continent LLC, Dixie Electric Membership Corporation, Inc. Enbridge Energy Company, Inc., EnCana Oil & Gas (USA), Inc., and Jackson County Rural Electric Membership

Cooperative.⁴ For years, these utilities and other CII entities have been unnecessarily and unfairly caught up in regulatory uncertainty regarding the ongoing proceedings at the FCC involving the licenses that they had hoped to acquire or were leasing from MC/LM. The assignment of MC/LM's licenses to Choctaw represents a way out of the morass for these utilities and CII entities, and UTC supports Commission grant of the assignment application for that reason.⁵

Background and Introduction

Founded in 1948, UTC is the international trade association for the telecommunications and information technology interests of utilities and other critical infrastructure industries. Its members own, manage and operate extensive private internal communications systems that support the safe, reliable, secure and efficient delivery of essential electric, gas and water services to the public at large. These members include large investor-owned utilities, which may serve millions of customers across multi-state service territories; and they include relatively small rural cooperative and municipal utilities, which may serve only a few thousand customers in remote areas of the country. UTC advocates for policies that promote and protect the interests of utilities in their communications systems.

UTC's members are upgrading their communications systems in mission-critical operation and control systems to comply with new and emerging requirements and the Federal government's encouragement to create a smart grid. These system upgrades will enhance electric utilities' ability to better monitor power quality, identify specific device malfunctions, pinpoint outages and detect overloading conditions and remotely effectuate appropriate re-

Cooperative.)

⁴Comments of Shenandoah Valley Electric Cooperative in WT Docket No. 13-75 (filed May 9, 2013) (hereinafter "SVEC"). .

routing, among other things, all of which provide enhanced safety and reliability as well as operational efficiency.

Granting the pending assignment application would clear the way for utilities to gain access to much needed spectrum to upgrade their current systems and comply with changing requirements and expectations for the industry, thereby promoting overarching public interest in reliable, affordable and secure power. These new systems will promote energy independence and security.⁶ Moreover, these new systems will help to ensure the safe and reliable operations of critical infrastructure.

Discussion

As the *CII Companies* and SVEC aptly demonstrated in their comments, the Commission may grant the relief that they seek by either granting relief under *Second Thursday* or alternatively by reference to footnote seven of the *OSC/HDO*⁷, as set out in Choctaw's assignment application and the *Second Thursday Public Notice*.

The Commission can grant relief under *Second Thursday* because the *CII Companies* and SVEC are innocent parties and the public interest would be served by granting the assignment

⁶ For example, utilities must meet North American Electric Reliability Corporation (NERC) requirements for critical infrastructure protection. NERC reliability standards are mandatory for electric utilities that operate facilities that form the nation's bulk electric system. Two NERC standards directly impose requirements on covered utilities to have "adequate and reliable" telecommunications facilities. See, NERC Standard COM-001-1.1 Telecommunications, available at: http://www.nerc.com/files/COM-001-1_1.pdf and Standard COM-002-2 Communications and Coordination, available at <http://www.nerc.com/files/COM-002-2.pdf>. Other NERC standards indirectly require robust functioning of utilities' telecommunications networks to achieve compliance. See, e.g., Standard EOP-008-1 – Loss of Control Center Functionality, available at <http://www.nerc.com/files/EOP-008-1.pdf> and Standard CIP-002-3 – Cyber Security – Critical Cyber Asset Identification available at: <http://www.nerc.com/files/CIP-002-3.pdf>. In particular, the emerging CIP Standards will drive increased demand for enhanced communications capabilities. Access to additional spectrum, such as the instant MCLM licenses, is necessary to cost-effectively meet electric utilities' increased communications needs. For a list of the NERC CIP requirements go to <http://www.nerc.com/page.php?cid=2%7C20>.

⁷ Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, ET Docket No. 11-71, 26 FCC Rcd. 6520 (2011) (*OSC/HDO*).

application.⁸ Also, the individuals in MC/LM that were charged with misconduct have no part in Choctaw.⁹ Therefore, the Commission can grant relief under *Second Thursday*.

The Commission can alternatively grant relief by reference to footnote seven in the *OSC/HDO*. As the *CII Companies* demonstrate in their comments, the same public interest considerations underlying the need for positive train control (PTC) also support granting relief for utilities and CII entities to acquire the licenses held by MC/LM through Choctaw. It is clear that if the Commission grants the assignment application to Choctaw, that Choctaw will in turn assign or lease the spectrum to the *CII Companies* and SVEC. It is also clear that the licenses will be used to advance overarching national energy policy objectives, including smart grid, which will in turn promote many public safety and national security goals.

⁸See Comments of CII Companies at 11-14; and see Comments of SVEC at 3.

⁹ While some parties allege that the DePriests stand to benefit from the proposed transaction, these allegation are unsubstantiated and circumstantial. See Petition to Deny by Council Tree Investors, Inc. in WT Docket No. 13-85 at 4-8 (filed May 9, 2013).

